



8320-01

DEPARTMENT OF VETERANS AFFAIRS

Employees whose Association with For-Profit Educational Institutions Poses No Detriment to Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent and request for comments.

SUMMARY: The Department of Veterans Affairs (VA) intends to waive the application of applicable Federal regulations (see **SUPPLEMENTARY INFORMATION**) for all VA employees who receive any wages, salary, dividends, profits, gratuities, or services from, or own any interest in, a for-profit educational institution in which an eligible person or veteran is pursuing a program of education under a VA education benefits program.

DATES: This notice is applicable on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, without further notice, unless VA receives a significant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICAITON IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments may be submitted by email through <http://www.regulations.gov>; by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “Notice of Intent and request for comments - Employees Whose Association With For-Profit Educational Institutions

Poses No Detriment to Veterans.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>. A significant adverse comment is one that explains why the waiver would be inappropriate, including challenges to the waiver’s underlying premise or approach, or why it would be ineffective or unacceptable without change. If significant adverse comments are received, VA will publish a notice of receipt of significant adverse comments in the *Federal Register* addressing the comments and announcing VA’s final decision on this action.

FOR FURTHER INFORMATION CONTACT: Christopher Britt, Office of General Counsel (02-EST), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, 202-461-7637 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is committed to ensuring that veterans are protected from predatory behavior from for-profit educational institutions. We must also ensure that all employees abide by government ethics laws, particularly the laws that prohibit employees from using their public office for private gain. This is the bedrock of our ethics program: placing loyalty to the Constitution, laws, and ethical principles above personal interests.

One statute pertaining to for-profit educational institutions —38 U.S.C. 3683— was passed by Congress decades ago, before there were conflict-of-interest laws

applicable to all Executive Branch employees, and was intended to prevent corruption in connection with VA's administration of benefits under VA education benefits programs. In current practice, however, that statute has illogical and unintended consequences, in that it requires the removal of any VA employee who has any connection to a for-profit educational institution that students attend under a VA education benefits program. As an example, a literal reading of the statute would require the removal of a VA lab technician who takes a class, on her own time and using her own money, at a for-profit educational institution that is also attended by students using VA education benefits. It would also require the removal of a VA physician who teaches an introductory biology class at such a school. The statute applies retroactively, in that it requires VA to remove employees who have no current connection to a for-profit institution but took or taught a class at one at any time during their VA employment. Applying this statute to VA employees who have not engaged in any real conflict of interest would be unjust and detrimental to VA's ability to serve veterans.

The VA Inspector General (IG) recently issued a report finding that two VA employees violated 38 U.S.C. 3683 when they taught as adjunct faculty at for-profit educational institutions that have students using VA education benefits. Fortunately, that IG report recommended that VA issue waivers, as the statute specifically allows, for employees whose connection with for-profit institutions creates no actual conflict of interest and poses no harm to veterans.

Therefore, under the authority granted by 38 U.S.C. 3683(d) and 38 CFR 21.4005, the Secretary intends to waive the application of 38 U.S.C. 3683(a) for all VA employees who receive any wages, salary, dividends, profits, gratuities, or services

from, or own any interest in, a for-profit educational institution in which an eligible person or veteran is pursuing a program of education using VA education benefits, as long as employees abide by the conflict of interest laws discussed in the following paragraph, as the Secretary has determined that no detriment will result to the United States, veterans, or eligible persons from such activities. The Secretary will reserve his authority to remove an employee under section 3683(a) if the employee has committed, in relation to a for-profit educational institution, a violation of the conflict of interest laws discussed in the following paragraph. This waiver will apply to all employees who previously had a connection to a for-profit educational institution, who currently have a connection to a for-profit educational institution, and who in the future will have a connection to a for-profit educational institution. This includes, but is not limited to, employees whose only connection to a for-profit educational institution is that they have taken, are taking, or will take classes, regardless of how the classes were paid for.

Employees covered by this waiver must continue to abide by 18 U.S.C. 208, which prohibits an employee from participating personally and substantially in VA particular matters that will directly and predictably affect the employee's financial interests. Such financial interests include owning a share of, being employed by, negotiating for employment with, or having an arrangement for future employment with an outside entity. Employees must also continue to abide by 5 CFR 2635.502, which requires employees to recuse themselves from VA matters when an employee's participation would cause a reasonable person to question the employee's impartiality. Specifically, if an employee has a "covered relationship" with a for-profit educational institution (for example, as a consultant or contractor), that employee must not

participate in any VA matters to which the for-profit educational institution is a party, if such participation would cause a reasonable person to question the employee's impartiality.

The provisions of 38 U.S.C. 3683 apply to VA employees who have a connection to a for-profit institution in which an eligible person or veteran was pursuing a program of education or course "under this chapter [i.e., chapter 36] or chapter 34 or 35 of this title [i.e., title 38, United States Code]." In 38 U.S.C. 3034(a)(1), 3241(a)(1), and 3323(a)(1), Congress generally has made the provisions of chapter 36, including section 3683, applicable also to VA education benefits under chapters 30, 32, and 33 or title 38, United States Code. Accordingly, the requirements of section 3683 apply to for-profit institutions in which an eligible person or veteran was pursuing a program of education or course under chapter 30, 32, 33, 34, 35, or 36 of title 38. The waiver discussed in this notice would apply in circumstances in which the eligible person(s) or veteran(s) were receiving benefits under any of those chapters.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the *Federal Register* for publication electronically as an official document of the Department of Veterans Affairs. Vivieca Wright Simpson, Chief of Staff, Department of Veterans Affairs, approved this document on September 8, 2017, for publication.

Dated: September 8, 2017.

Jeffrey Martin,

Office Program Manager,

Office of Regulation Policy & Management,

Office of the Secretary,

Department of Veterans Affairs.

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